[Ulemek v. Croatia (application no. 21613/16)](http://www.prisonlitigation.org/?email_id=130&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9lbmc%2FaT0wMDEtMTk3MjUz&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions" \t "_blank)

Facts – The applicant had served a prison sentence in two detention facilities in Croatia, namely Zagreb Prison and Glina State Prison. The prison regime and conditions of detention in these two prison facilities differed. As to the conditions of detention in Zagreb Prison, the applicant did not avail himself of the preventive remedy before the prison administration and/or the sentence-execution judge, which the European Court had already found in its case-law to be effective. As to the conditions in Glina State Prison, the applicant had made use of that remedy but, once his complaints were dismissed, he failed to complain to the Constitutional Court. The European Court had already found that lodging a complaint with the Constitutional Court was an additional required step in the process of exhausting the preventive remedy for conditions of detention in Croatia. Nevertheless, after his release from Glina State Prison, the applicant began a civil action for damages for the allegedly inadequate conditions in both facilities. After the dismissal of his constitutional complaint on the merits, the applicant lodged an application with the European Court within six months of receiving the Constitutional Court’s decision. He mainly complained under Articles 3 and 13 of the Convention about the inadequate conditions of his detention in both prisons and about the lack of an effective remedy in that regard.

Law – (a)  Effective remedies under Article 13 of the Convention in general and specifically with respect to conditions of detention in the case-law of the European Court

The Court had recently examined the structural reforms in the systems of remedies of different countries. These reforms had been introduced in response to the Court’s pilot and leading judgments concerning inadequate conditions of detention. The Court had thereby reaffirmed its case-law, according to which the preventive and compensatory remedies in this context had to be complementary.

(b)  Exhaustion of remedies and compliance with the six-month rule in cases concerning conditions of detention in the case-law of the European Court

Applicants who were still in detention under the circumstances of which they complained were obliged to exhaust the available and effective preventive remedy before bringing their complaints before the Court.

However, in cases where unsatisfactory conditions of detention had already ended, the use of a compensatory remedy, such as a civil action for damages, was normally an effective remedy for the purposes of Article 35, when there had not been a preventive remedy providing for an effective avenue which the applicants could and should have used during their confinement. Accordingly, where an applicant had already been released when he or she lodged his application, a remedy of a purely compensatory nature could in principle have been effective and could have provided him or her with fair redress for the alleged breach of Article 3. By contrast, for countries where there had been an effective preventive remedy, the Court had considered the effectiveness of the compensatory remedy in combination with the use of an effective preventive remedy.

In this context, the use of a civil action for damages had not been an alternative to the proper use of the preventive remedy, irrespective of the fact that those remedies may be, as a whole, exercised through two separate sets of judicial proceedings. Moreover, it had not been unreasonable to require a prisoner to use the available and effective preventive remedy as a precondition for his or her use of the compensatory remedy, aimed at obtaining damages for inadequate conditions of detention in the past. Indeed, an effective preventive remedy was capable of having an immediate impact on an applicant’s inadequate conditions of detention. In the case of the compensatory remedy, this could only provide redress for the consequences of an applicant’s allegedly inadequate conditions of detention.

From the perspective of the State’s duty under Article 13, the prospect of future redress could not legitimise particularly severe suffering in breach of Article 3 and unacceptably weaken the legal obligation on the State to bring its standards of detention into line with the Convention requirements. Thus, given the close affinity between Articles 13 and 35 § 1 of the Convention, it would have been unreasonable to accept that once a preventive remedy had been established from the perspective of Article 13 – as a remedy found by the Court to be the most appropriate avenue to address the complaints of inadequate conditions of detention – an applicant could be dispensed from the obligation to use that remedy before bringing his or her complaint to the Court.

Thus, normally, before bringing their complaints to the Court concerning the conditions of their detention, applicants were first required to use properly the available and effective preventive remedy and then, if appropriate, the relevant compensatory remedy.

However, there might be instances in which the use of an otherwise effective preventive remedy would be futile in view of the brevity of an applicant’s stay in inadequate conditions of detention. In such a scenario, the only viable option would be a compensatory remedy opening up the possibility of obtaining redress for past placement in inadequate conditions. How short a period had to be that use of the preventive remedy was futile might depend on many factors related to the manner of operation of the domestic system of remedies and the nature of the alleged inadequacy of an applicant’s conditions of detention.

Use of the compensatory remedy could not be unlimited in time: it normally had to be used within six months of the allegedly inadequate conditions of detention ceasing to exist. This was without prejudice to the possibility that the relevant domestic law provided for different arrangements in the use of remedies or for a longer statutory time-limit for the use of a compensatory remedy, in which case the use of that remedy was determined by the relevant domestic arrangements and time-limits.

Where no effective remedy was available to the applicant, the period ran from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant. When it was clear from the outset that the use of a remedy could not be considered effective for an applicant’s complaints, the use of that remedy could not interrupt the running of the six-month time-limit. Where, therefore, an applicant availed him or herself of an apparently existing remedy and only subsequently became aware of circumstances which rendered the remedy ineffective, it might be appropriate to take as the start of the six-month period the date when the applicant first had become or ought to have become aware of those circumstances.

Moreover, in the context of conditions of detention, a period of an applicant’s detention should have been regarded as a “continuing situation” where an applicant had been confined in different detention regimes and/or facilities as long as the detention had been effected in the same type of detention facility in substantially similar conditions. Short absences, during which the applicant had been taken out of the facility for interviews or other procedural acts, would have no incidence on the continuous nature of the detention. However, the applicant’s release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the “continuing situation”. The complaint about the conditions of detention had to be filed within six months of the end of the situation complained of or, if there had been an effective domestic remedy to be exhausted, within six months of the final decision in the process of exhaustion.

(c)  Preliminary remarks concerning the Croatian preventive and compensatory remedies

The Croatian legal system provided for both preventive and compensatory remedies. The preventive remedy was exercised by making a complaint to the prison administration and/or the sentence-execution judge directly, while the compensatory remedy related to the possibility of obtaining compensation in the form of damages before the relevant civil courts. In any event, in case of an unfavourable outcome in the use of the preventive and/or compensatory remedy, an applicant could bring complaints before the Constitutional Court which also had the competence to order his or her release or removal from inadequate prison conditions.

Nevertheless the compensatory remedy, aimed at obtaining damages for the time the applicant had been detained in inadequate conditions of detention, had not been in itself effective. It was only in combination with an effective use of the preventive remedy, leading to an acknowledgment of a breach of the applicant’s rights and his or her removal from the inadequate conditions of detention, that civil proceedings could satisfy the requirements of effectiveness. Applicants had to use diligently the available preventive remedy and, in the event of an unfavourable outcome, to lodge a constitutional complaint before the Constitutional Court.

Accordingly applicants were required, before bringing their complaints to the European Court, to afford the Croatian Constitutional Court the opportunity of remedying their situation and addressing the issues they wished to bring before the European Court. Where applicants had failed to comply with that requirement, the Court had declared their applications inadmissible for non-exhaustion of domestic remedies.

According to the relevant practices of the domestic authorities, including the Constitutional Court, once the preventive remedy had been set in motion by first lodging a complaint before the prison administration and/or the sentence-execution judge directly, neither removal from inadequate conditions of detention nor release prevented the examination and finding of a breach of Article 3.

As regards the use of the compensatory remedy, the Constitutional Court had recently held that appellants were not required to use the preventive remedy before the sentence-execution judge in order formally to be allowed to lodge a civil action for damages before the civil courts (which itself would also have allowed them, if needed, to bring their complaints before the Constitutional Court). However, where appellants lodged their constitutional complaints after their civil actions for damages (related to inadequate conditions of detention) had been dismissed, it seemed that the Constitutional Court approached cases in two ways. On the one hand, in several such cases the Constitutional Court had limited its examination to the procedural assessment of the civil courts’ duty to elucidate the circumstances of a former prisoner’s conditions of detention. On the other hand, in other cases the Constitutional Court itself had examined the (in)adequacy of detention conditions, and not just the procedural aspect of the complaints.

The above principles concerning the effective remedies had been found to be applicable to the complaints under Article 8 of the Convention concerning the conditions and regime of an applicant’s detention.

(d)  Effectiveness of remedies in Croatia concerning allegations of inadequate conditions of detention

The European Court confirmed its case-law as to the existence of effective preventive and compensatory remedies in Croatia concerning allegations of inadequate conditions of detention.

(e)  Whether the applicant had properly exhausted the domestic remedies and complied with the six-month time-limit

Regarding the applicant’s complaint about the inadequate conditions of detention, an issue that had to be considered was whether the applicant had properly exhausted the relevant domestic remedies (preventive and compensatory) for some of the periods of his imprisonment, as required under the Court’s case-law. There was consequently also the question of whether the applicant had complied with the six-month time-limit for bringing his complaints to the Court. The Constitutional Court, as the highest court in the country, had examined on the merits the applicant’s complaints of inadequate conditions of detention for the overall period of his confinement in Zagreb Prison and Glina State Prison, and the applicant had duly lodged his application with the European Court after obtaining that decision of the Constitutional Court. As the Constitutional Court’s case-law stood, the applicant’s complaints could not be dismissed for failure to exhaust domestic remedies and/or non‑compliance with the six-month time limit.

(f)  Summing-up

In view of the above considerations, reiterating that there was nothing in the applicant’s arguments calling into question the general effectiveness of remedies in Croatia concerning allegations of inadequate conditions of detention, the Court found that the applicant’s complaint under Article 13 was manifestly ill-founded.

Conclusion: preliminary objections dismissed (exhaustion of domestic remedies).

 The Court also found, unanimously, a violation of Article 3 in respect of the applicant’s conditions of detention in Zagreb Prison; but no violation of Article 3 as regards the applicant’s conditions of detention in Glina State Prison.

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